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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 CASCADE YARNS, INC., a Washington  
10 Corporation

11 Plaintiff,

12 v.

13 KNITTING FEVER, INC., KFI, INC.,  
14 DESIGNER YARNS, LTD., SION ELALOUF,  
15 JAY OPPERMAN, DEBBIE BLISS,  
16 EMMEPIEFFE SRL, and DOES 1-50,

17 Defendants,

18 v.

19 ROBERT A. DUNBABIN, SR., JEAN A.  
20 DUNBABIN, ROBERT A DUNBABIN, JR.,  
21 and SHANNON M. DUNBABIN,

22 Third Party Defendants.

NO. C10-861 RSM

ORDER GRANTING MOTION FOR  
ISSUANCE OF LETTERS ROGATORY

23 THIS MATTER comes before the Court upon Motion by Plaintiff Cascade Yarns, Inc.  
24 (“Cascade”) for Issuance of Letters Rogatory. Dkt. # 993. Cascade seeks international judicial  
25 assistance in order to obtain documents and testimony from third-parties in Spain and Italy. *See*  
26 Dkt. # 993, Ex. 4, 5. Having reviewed Cascade’s motion and support declaration, response by  
Defendants, and pleadings and files herein, and for the reasons sets forth below, the Court  
GRANTS Cascade’s motion.

1           On November 11, 2013, the Court granted Cascade’s motion to consolidate the instant  
2 action with Case No. C13-0674. Cascade’s consolidated claims against Defendant Knitting  
3 Fever, Inc. (“KFI”) for mislabeling as to country of origin for Mondial and Katia branded yarns  
4 sold by KFI are the only claims for which discovery in this case is outstanding. Pursuant to  
5 Fed.R.Civ.P. 28(b) and the Hague Convention on the Taking of Evidence in Civil or Commercial  
6 Matters (“Hague Convention”), Cascade now seeks production of documents from and oral  
7 depositions of distributors of the accused yarns, Mondial in Italy and Katia in Spain. *See* Dkt. #  
8 993. Cascade represents that this information is essential to demonstrate that the accused yarns  
9 were made in a country apart from their mailing addresses. *Id.* at, p. 2. Defendants Knitting  
10 Fever, Inc., KFI, Inc., Sion Elalouf, and Jay Opperman (collectively, “Defendants”) have filed a  
11 response indicating that they do not oppose the motion but refrain from joining in it in view of  
12 the alleged futility of seeking pre-trial discovery of documents in Spain and Italy. *See* Dkt. # 999.  
13 Defendants represent that although Spain and Italy are both signatories to the Hague Convention,  
14 neither recognizes letters rogatory requesting pre-trial discovery. *Id.* at pp. 2-3.

15           Discovery from persons outside the United States is governed by Fed.R.Civ.P. 28 and,  
16 where applicable, the Hague Convention. The Hague Convention “prescribes procedures by  
17 which a judicial authority in one contracting state may request evidence located in another  
18 contracting state.” *Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Court*, 482 U.S. 522,  
19 524 (1987). Neither party disputes that the United States, Spain, and Italy are all signatories to  
20 the Hague Convention. *See* Dkt. ## 993, p. 2; 999, p. 2. Defendants contend, however, that the  
21 requested issuance of Letters Rogatory is futile as Spain and Italy have both made reservations,  
22 in accordance with Article 23 of the Hague Convention, that they “will not execute Letters of  
23 Request issued for the purpose of obtaining pre-trial discovery of documents as known in  
24 common-law countries.” *See* Dkt. # 999, pp. 2-3.

1 The Hague Convention procedures are generally available to litigants whenever they  
2 facilitate the gathering of evidence by the means the Convention authorized. *Societe Nationale*  
3 *Industrielle Aerospatiale*, 482 U.S. at 541. In determining whether comity warrants use of the  
4 Hague Convention procedures, the Court may take into account factors such as: 1) the  
5 importance to the litigation of the information requested, 2) the degree of specificity of the  
6 request, 3) whether the information originated in the United States, 4) the availability of  
7 alternative means to secure the information, and 5) the extent to which noncompliance would  
8 undermine important interests of the United States or of the state where the information is  
9 located. *Id.* at 544, n. 28. *See also, In re Baycol Products Litigation*, 348 F.Supp.2d 1058, 1059  
10 (D.Minn. 2004). This general comity analysis remains relevant even where the state in question  
11 has made an Article 23 reservation. As Justice Blackmun noted in a separate opinion, “the  
12 emerging view of [the Article 23] exception is that it applies only to requests that lack sufficient  
13 specificity or that have not been reviewed for relevancy by the requesting court.” *Societe*  
14 *Nationale Industrielle Aerospatiale*, 482 U.S. at 564-65 (Blackmun, J., concurring and  
15 dissenting)(internal quotation omitted). *See also, Tulip Computers Intern. B.V. v. Dell Computer*  
16 *Corp.*, 254 F.Supp.2d 469, 475 (D.Del. 2003); *In re Baycol Production Litigation*, 348  
17 F.Supp.2d at 1060.

18 In the instant case, the factors in the Court’s comity analysis militate in favor of issuance  
19 of the Letters Rogatory. Cascade has specified the requested documents with sufficient  
20 particularity and has established to the Court’s satisfaction that the information sought is  
21 important to the claims being litigated. Use of Hague Convention procedures is particularly  
22 relevant where, as here, discovery is sought from a non-party in a foreign jurisdiction. *See Tulip*  
23 *Computers Intern. B.V.*, 254 F.Supp.2d at 474. Whether the Letters Rogatory will be executed in  
24 light of Spain and Italy’s Article 23 reservations is a matter for the appropriate Spanish and  
25 Italian tribunals, rather than this Court, to determine. *See In re Baycol Products Litigation*, 348  
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1 F.Supp.2d at 1061 (determining that “whether the Letter Request will be executed in light of  
2 Italy’s Article 23 reservation...is best left to the appropriate Italian tribunal”); *Tulip Computers*  
3 *Intern. B.V.*, 254 F.Supp.2d at 475 (finding that if the requests are overly broad under the law of  
4 the Netherlands, they can be narrowed by the appropriate officials); *Lantheus Med. Imaging v.*  
5 *Zurich Am. Ins. Co.*, 841 F.Supp. 2d 769, 794 (S.D.N.Y. 2012)(explaining that “foreign courts  
6 charged with enforcing letters rogatory may limit enforcement of the discovery device where  
7 appropriate.”). Issuance of the requested letters is also warranted on equitable grounds, as the  
8 Court has previously granted Defendants’ request for issuance of Letters Rogatory to a non-party  
9 in Italy. *See* Dkt. # 557. Nonetheless, in light of the expedited discovery schedule set in this  
10 matter (*See* Dkt. ## 992, 998), the Court will entertain future challenges if the discovery sought  
11 results in unnecessarily protracted delay.

12 For the reasons stated herein, the Court hereby ORDERS that Cascade’s Motion for  
13 Issuance of Letters Rogatory (Dkt. # 993) is GRANTED. Cascade may seek production of true  
14 and complete copies of documents from Katia S.A. and Mondial S.p.A. identified in Ex. A to the  
15 respective Letter Requests for International Judicial Assistance (Dkt. # 993, Ex. 3, 4) pursuant to  
16 Fed.R.Civ.P. 26(d)(1), Fed.R.Civ.P. 28, and applicable law and treaty. Cascade may also obtain  
17 the testimony of Katia S.A. and Mondial S.p.A. as described in the accompanying Letter  
18 Requests for International Judicial Assistance for use at trial. The Court shall sign the proposed  
19 Letters of Request and provide them to counsel.

20 Dated this 16<sup>th</sup> day of January 2014.

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23 RICARDO S. MARTINEZ  
24 UNITED STATES DISTRICT JUDGE  
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